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10/690,116	10/21/2003	Karl Burgess	C4273(C)	5360

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EXAMINER
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LU, JIPING

ART UNIT	PAPER NUMBER
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3749

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/690,116  
Filing Date: October 21, 2003  
Appellant(s): BURGESS ET AL.

**MAILED**  
**JUN 05 2006**  
**Group 3700**

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Milton L. Honig  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 3/13/2006 appealing from the Office action mailed 11/16/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. The amendment after final under 37 CFR 1.116 filed on 12/5/05 has been entered for appeal purposes.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

**GROUND OF REJECTION NOT ON REVIEW**

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief: claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Compa et al. and Miller as applied to claim 1 above, and further in view of US Patent 5,072,526 to Hirota et al.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 7-11, 13-14, 19, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,701,202 to Compa et al. and US Patent 5,791,801 to Miller.

Compa et al. teaches a method and apparatus for treating fabrics comprising a device 20 for attachment onto the inside of a dryer drum 34 comprising a reservoir 22 for holding a fabric conditioning liquid, inner flow control members 30 comprising a membrane 32, and transfer member 84 for transferring the conditioning liquid onto fabrics being rotated inside the drum 34. Transfer member 84 is polyurethane foam. Note column 3, lines 12-26 and Figures 4 and 9. Compa does not teach using compressed polyurethane foam having a compression ratio of 8 or more. Miller teaches a similar element for transferring a liquid from a reservoir to an application point comprising compressed polyurethane foam. Note column 3, line 64- column 4, line 16. As Miller teaches that a polyurethane foam that is “permanently compressed to a predetermined thickness” is ideal for “regulating the rate of fluid release from the applicator,” it would have been obvious to one of ordinary skill in the art to modify the foam applicator of Compa et al. with the compressed foam applicator of Miller. Regarding claim 5, Compa et al., as modified by

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Miller, does not teach polyester foam. However, such a modification would have been obvious to one of ordinary skill in the art since both Compa et al. and Miller teach that a variety of foams can be used (note Compa et al. column 3, line 15 and Miller column 4, lines 10-16) and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Regarding claims 1, 7-11, 13-14, Compa et al., as modified by Miller, does not teach the exact pore sizes and compression ratios presently claimed. However, such limitations would have been obvious to one of ordinary skill in the art since Miller teaches that a variety of compressed foams can be used and it has been held in the art that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranged involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

It should be noted that the limitation regarding "compressed" does not provide any patentable merit because the adjective "compressed" contains no structure. The polyurethane foam in Compa et al is deemed to be compressed to certain degree when installed. Furthermore, the Miller patent does show compressed foam same as the applicant's. With regard to claimed compression ratios, it is deemed to be merely an obvious matter of design choice in order to obtain an optimal result. It is known to have a higher compression ratio result in a reduction of staining.

It is noted that claim 19 contains no structure. The phrase "optionally provided in a reservoir for use with said device" does not carry any patentable weight because it is only optional.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Compa et al. and Miller as applied to claim 1 above, and further in view of US Patent 5,072,526 to Hirota et al.

Compa et al., as modified by Miller, does not teach placing his treatment device on the door of the drying machine. Hirota et al. teaches a similar treating method comprising porous conditioning dispenser 39 attached to door 5. Note column 3, lines 51-59 and Figures 1 and 5a. As Hirota et al. teaches that a porous conditioning dispenser will be more securely placed when attached to the door of a drying machine, it would have been obvious to one of ordinary skill in the art to place the dispenser of Compa et al. on the door of the dryer as taught by Hirota et al. Regarding the temperatures of claims 17 and 18, Compa et al., as modified by Miller and Hirota et al., does not define the temperature of the air used for drying. However, such claim limitations would have been obvious to one of ordinary skill in the art since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

#### **(10) Response to Argument**

On page 6 of the Brief, the appellant has indicated that all claims stand or fall together with claim 1 being representative of the invention, then, the examiner will only focus on claim 1 in response to the arguments presented herein.

On pages 7-8 of the Brief, the appellant argued that the Compa et al US Pat. 3701202 does not show the claimed “compressed foam” and “having a compression ratio 8 or more”. The examiner disagrees because the patent to Compa et al does show the foam 84 is compressed as clearly shown in Figs. 4 and 9. As indicated in Fig. 4, the foam 84 is formed in an inverted U-

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shaped. The foam 84 is made of felt, porous synthetic plastic material, such as foamed polyurethane or the like (see col. 3, lines 12-26). Therefore, it must be compressed to the inverted U-shape prior to the installation. With regard to the claimed “compression ratio 8”, the Miller patent clearly teaches that a polyurethane foam that is “permanently compressed to a predetermined thickness” is ideal for “regulating the rate of fluid release from the applicator”. Miller’s patent teaches for a polyurethane foam pad of 3/8 inch thickness for using with antiseptic solution liquid, the compression ratio of the foam pad is about 3. (see col 4, lines 10-50). It is well known in the art for the fluid absorbing pads, the compression ratio of flexible polyurethane material is determined by many factors. The considering factors include desired thickness of the foam needed to be installed, viscosity of the fabric treatment composition or freshener fluid, amount of fluid needs to be transferred, porosity of the foam, etc. Broad claim 1 merely calls for a “compression ratio of 8 or more” without any upper limit. Based on the teachings of Miller, to compress the polyurethane foam 84 in a ratio of 8 or more in the patent to Compa et al would have been obvious matter of design choice in order to obtain an optimal fluid delivery or transfer flow rate. Moreover, the appellant simply failed to provide any criticality of such claimed compression ratio of 8 or more without any upper limits. The supporting specification also failed to explain any criticality of the “compression ratio 8 or more”. This is a very broad range. In order to rely upon the numerical range without upper limit, the appellant must provide a test report showing such criticality of 8 or more with no upper limit which produced a new and unexpected result over the prior art compression ratio below 8. On page 7 of the Brief, the appellant also argued that the examiner refused to give any patentable weight to the claimed “compressed foam”. The term “compressed” is merely a method of making in the

apparatus claim 1. The “compressed foam” does not add any structure to apparatus claims 1. Therefore, the examiner still believes the patent to Compa does show the inverted U-shape compressed foam 84 prior to the installation. The inverted U-shape is formed by compression. The polyurethane foam 84 normally does not come in the form of U-shape. It must be compressed into inverted-U shape.

On pages 9-10 of the Brief, the appellant argues that the Compa et al patent failed to disclose “an inner flow control member comprising a membrane”. The examiner disagrees. The Compa patent clearly shows flow control member 30 with its surface 32 is in a form of membrane. The examiner has interpreted that membrane<sup>1</sup> means a thin layer. The thin surface perforated surface 32 of Compa has a structure and function as the claimed “membrane”. The examiner merely gave the term membrane its reasonable broadest interpretation.

Finally, on page 11 of the Brief, the appellant argued that there is no teaching to combine the prior art patents to Compa et al and Miller. In particular, the Miller patent teaches away from highly compressed pads because the Miller’s compressed pad is used to retain adequate liquid storage capacity to prevent unwanted dripping. The examiner disagrees with the appellant’s argument because Miller’s compressed polyurethane foam pad with compression ratio of 3 clearly demonstrated the principle of the requirements of compression ratio for polyurethane

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<sup>1</sup> OXFORD ENGLISH DICTIONARY

3. gen. Any thin, often pliable, sheet or layer, esp. one forming a barrier or lining. Also fig. 1631 B. JONSON Staple of Newes III. ii. 245 in Wks. II, Vertue and honesty; hang 'hem; poore thinne membranes Of honour; who respects them? a1717 W. DIAPER tr. Oppian Halieuticks (1722) 24 These are the Masts, and Rigging of the Ship. A Membrane stretcht between supplies the Sail. 1862 Catal. Exhib. II. XVII. 128 Liston's membrane plaster. 1876 Proc. Amer. Acad. Arts & Sci. (1877) 12 8, I placed the membrane of the telephone near my mouth. 1891 Jnrl. Chem. Soc. 60 140 A solution of cupric sulphate superposed on a solution of potassium ferrocyanide precipitates at the dividing surface an exceedingly fine membrane of cupric ferrocyanide. 1929 Brit. Jnrl. Exper. Pathol. 10 126 That membranes can be prepared to retain bacteria is..well known. 1958 J. S. SCOTT Dict. Civil Engin. 225 Membrane..., a thin film or skin, such as the skin of a soap bubble or a waterproof skin. 1975 Audubon May 22/1 A tank structure..over which a thin membrane of steel, a mere 35 millimeters..thick, has been drawn. 1986 Do it Yourself June 57/2 It is basically a standard 100mm concrete slab with a polythene sheet damp proof membrane laid over it.



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foam material. As stated above, that the compression ratio of flexible polyurethane material is determined by many factors. The considering factors include desired thickness of the foam needed to be installed, viscosity of the fabric treatment composition or freshener fluid, amount of fluid needs to be transferred, porosity of the foam, etc. Again, it is the examiner's position that one skilled in the art based on the teachings of Miller would use compressed polyurethane foam in a ratio of 8 or more in the patent to Compa et al as an obvious matter of design choice in order to an optimal fluid delivery or transfer flow rate.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Jiping Lu  
Primary Examiner  
Art Unit 3749

Conferees:

Ehud Gartenberg



Kenneth Rinehart

